

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES RUHLMANN, et al.,
 Plaintiff(s),

v.

GLENN RUDOLFSKY, et al.,
 Defendant(s).

Case No. 2:14-cv-00879-RFB-NJK
ORDER
 (Docket Nos. 120, 122)

Pending before the Court are Plaintiffs' motions for an extension of time to serve Defendant House of Dreams Kauai, Inc. ("House of Dreams") and for leave to serve it by publication. Docket Nos. 120, 122. The Court ordered any response to be filed by November 7, 2016, Docket No. 123, but no response has been filed. The motions are properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motions are both **GRANTED**.

I. Motion to Extend Time for Service

Where good cause is shown, the time for serving the complaint is extended for an appropriate period. *See* Fed. R. Civ. P. 4(m). The motion establishes sufficient cause to extend the time for effectuating service on House of Dreams by 60 days from the date of this order.

II. Motion for Leave to Serve by Publication

Plaintiffs also seek leave to serve House of Dreams by publication. Service by publication implicates a defendant's fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result,

1 service by publication is generally disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.–Int’l*
2 *Alliance of Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*, 2013
3 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29, 2013).

4 The Federal Rules of Civil Procedure provide for service within the United States pursuant to
5 the law of the state in which the district court is located, or in which service is made. *See, e.g., Fed. R.*
6 *Civ. P. 4(e)(1)*. Pursuant to Rule 4 of the Nevada Rules of Civil Procedure, parties are generally
7 required to personally serve summons and the complaint upon defendants. Nevada law also permits a
8 party to obtain leave for service by publication when the opposing party, *inter alia* “cannot, after due
9 diligence be found within the state, or by concealment seeks to avoid the service of summons.” Nev.
10 R. Civ. P. 4(e)(1). There are several factors courts consider to evaluate a party’s due diligence, including
11 the number of attempts made to serve the defendant at his residence and other methods of locating
12 defendants, such as consulting public directories and family members. *See Price*, 787 P.2d at 786-87;
13 *Abreu v. Gilmer*, 985 P.2d 746, 747 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

14 In this case, Plaintiffs have attempted to serve House of Dreams on numerous occasions at the
15 residence of its officers, Defendants Glenn Rudolfsky and Kim Rudolfsky, which is the address for
16 House of Dreams listed with the New York Secretary of State. *See* Docket No. 121. Despite cars being
17 in the driveway of that home, most attempts at service were met with the failure of any person to answer
18 the door. *See id.* On at least one occasion, however, someone spoke through the door to the process
19 server, but indicated Glenn Rudolfsky was not home and walked away. *See id.* Plaintiffs have also
20 sought a waiver of service, which was not accepted as of the date of the motion. *See id.* The Court
21 finds these efforts sufficient to establish diligence, and permits service by publication.

22 **III. Conclusion**

23 Accordingly, the Court **GRANTS** the motions to extend the deadline to effectuate service and
24 for service by publication. The deadline to serve House of Dreams by publication is extended by 60 days
25 from the date of this order. Plaintiffs shall comply with the requirements of Nevada Rule of Civil
26 Procedure 4 and shall:

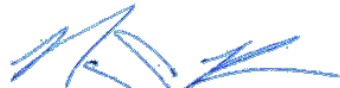
- 27 (a) Serve House of Dreams by publication in a newspaper of general circulation in
28 the State of Nevada on a weekly basis for a period of four weeks.

1 (b) Serve House of Dreams by publication in a newspaper of general circulation in
2 the State of New York on a weekly basis for a period of four weeks.

3 (c) After publication is complete, Plaintiffs shall file an Affidavit of Publication.

4 IT IS SO ORDERED.

5 DATED: November 10, 2016



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7 NANCY J. KOPPE
United States Magistrate Judge